

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

ROBERT KESSLER, Plaintiff, -vs- SPE PROPERTIES LLC Defendants.	Cause No. 2:20-cv-1776 COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
--------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------

COMES NOW, Plaintiff, ROBERT KESSLER (hereinafter the “Plaintiff”), through undersigned counsel, hereby files this Complaint and sues SPE PROPERTIES LLC, a Washington Limited Liability Company, hereinafter “Defendant” for injunctive relief, attorney’s fees and costs (including, but not limited to, court costs and expert fees), pursuant to 42 U.S.C. §12181, et. seq., commonly referred to as the “AMERICANS WITH DISABILITIES ACT” or “ADA” and alleges:

JURISDICTION AND PARTIES

1
2 1. This is an action for declaratory and injunctive relief pursuant to Title III of the
3 Americans with Disabilities Act, 42 U.S.C. §12181, et. seq., (hereinafter referred to as the
4 “ADA”). This Court is vested with jurisdiction under 28 U.S.C. §1331 and §1343.
5

6 2. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391 in that all events
7 and procedures giving rise to this Complaint occurred in this judicial district.

8 3. At the time of Plaintiff’s personal visit to Defendants’ public accommodation, prior
9 to instituting he instant action, Robert Kessler (hereinafter referred to as “Kessler”), was a resident
10 of the State of Washington, and suffered from what constitutes a “qualified disability” under the
11 Americans with Disabilities Act of 1990, and used a wheelchair for mobility due to this disability.
12 Plaintiff has an amputated leg. He is required to traverse with a wheelchair and is substantially
13 limited to performing one or more major life activities including, but not limited to walking,
14 standing and maneuvering.
15

16 4. The Plaintiff personally visited, on or about October 21, 2020 Defendants’ premises
17 open to the public, but was denied full and equal access to, and full and equal enjoyment of the
18 facilities, services, goods, privileges and accommodations offered to others without disabilities;
19 because of his disability requirements. Plaintiff lives in King County, Washington and travels in
20 the surrounding areas near Defendants’ facilities on a regular basis for shopping, dining and
21 entertainment.
22

23 5. Upon information and belief, SPE PROPERTIES LLC, a Washington Limited
24 Liability Company or Corporation, is the lessor and/or owner operator of the real property and/or
25 premises that are the subject of this lawsuit, commonly referred to as a Shell Food Mart located at
26 105 S. 156th Street, Burien, Washington.
27

1 6. Upon information and belief, SPE PROPERTIES LLC a Washington Limited
2 Liability Company or Corporation owns, leases, leases to, or operates a place of public
3 accommodation as defined by the ADA and the regulations implementing the ADA, 28 CFR
4 §36.201(a) and §36.104.
5

6
7 **COUNT I – VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT**

8 7. On or about July 26, 1990, Congress enacted the Americans with Disabilities Act
9 (“ADA”), 42 U.S.C. §12101, et. seq. Commercial enterprises were provided one and a half years
10 from enactment of the statute to implement all its requirements. The effective date of the Title III
11 of the ADA was January 26, 1992. 42 U.S.C. §12181; 20 C.F.R. §36.508(a).
12

13 8. Pursuant to 42 U.S.C. §12181(7) and 28 C.F.R. §36.104, the Subject Facility and
14 real property in this case is a place of public accommodation under the ADA in that they are
15 establishments which provide goods and services to the public.

16 9. Pursuant to 42 U.S.C. §12181(7) and 28 C.F.R. §36.104, the building and/or
17 premises which is the subject of this action is a public accommodation covered by the ADA and
18 which must be in compliance therewith as of the date of the Plaintiff’s visit.
19

20 10. The Plaintiff is informed and believes, and therefore alleges, that the Subject
21 Facility has begun operations and/or undergone remodeling, repairs and/or alterations since
22 January 26, 1990 and more specifically on or after March 15, 2012 as it pertains to 28 C.F.R. §
23 36.406.
24

25 11. Defendants have discriminated under the ADA, and continue to discriminate,
26 against the Plaintiff, and others who are similarly situated, by denying full and equal access to, and
27 full and equal enjoyment of, goods, services, facilities, privileges, advantages and/or

1 accommodations at Defendants' Subject Facilities in derogation of 42 U.S.C. §12101, *et. seq.*, and
2 as prohibited by 42 U.S.C. §12182 *et. seq.*, and by failing to remove architectural barriers
3 pertaining to the Plaintiff's disability pursuant to 42 U.S.C. §12182(b)(2)(a)(iv), where such
4 removal is readily achievable.

5
6 12. The Plaintiff has been unable to, and continues to be unable to, enjoy full and equal
7 safe access to, and the benefits of, all accommodations and services offered at Defendants' Subject
8 Facilities. Prior to the filing of this lawsuit, the Plaintiff visited the subject properties and was
9 denied full and safe access to all the benefits, accommodations and services of the Defendants.
10 Prior to the filing of this lawsuit, Kessler, personally visited Shell Food Mart located at 105 S.
11 156th Street, Burien, Washington, with the intention of accessing Defendants' facilities, but was
12 denied full and safe access to the facilities due to the inactions of removing applicable barriers.
13 Plaintiff intends to return to the Defendant's premises and public accommodate upon the premises
14 being made ADA compliant for access, but is currently deterred from returning due to these
15 barriers. As such, Plaintiff is likely to be subjected to reencountering continuing discrimination at
16 the premises unless it is made readily accessible to and usable by individuals with disabilities to
17 the extent required under the ADA, including the removal of the architectural barrier which remain
18 at the premises.

19
20
21 13. Pursuant to the mandates of 42 U.S.C. §12134(a), on July 26, 1991, the Department
22 of Justice, Office of the Attorney General, promulgated Federal Regulations to implement the
23 requirements of the ADA, known as the Americans with Disabilities Act Accessibility Guidelines
24 (hereinafter "ADAAG"), 28 C.F.R. Part 36. Defendants facilities do not comply with these
25 Guidelines.
26
27

14. The Defendants' premises are in violation of 42 U.S.C. §12182 *et. seq.*, the ADA and 28 C.F.R. §36.302 *et. seq.*, and has and is discriminating against the Plaintiff. The Plaintiff was deterred from encountering every non-compliant barrier at the premises due to the nature of encountering some barriers that denied the Plaintiff's full and equal enjoyment of the facility. Therefore, the Plaintiff encountered the following specific barriers to access that include but are not limited to the following, but also retains standing to allege non-compliance for any barrier not encountered by the Plaintiff at the premises related to the Plaintiff's specific disability requirements under *Doran v. 7-Eleven, Inc.*, 524 F.3d 1034, 1047 (9th Cir. 2008):

VIOLATIONS

15(a). Failure to provide ADA compliant number of van accessible parking stalls at the subject property in violation of 2010 ADAS Section 208.2 and 208.4. The premises failed to have any van accessible parking stalls to allow Plaintiff van accessible parking which Plaintiff requires as Plaintiff utilizes a wheelchair due to the Plaintiff's disability and such handicapped accessible parking stalls are necessary. Said barrier is covered by the A.D.A. guidelines and is in nonconformity with the requirements for such architecture.

15(b). Failure to provide ADA compliant parking stall markings at the subject property in violation of 2010 ADAS Section 502.3.3 and/or 1991 ADA Standards for Accessible Design. The premises contained dilapidated and in need of repair markings for parking areas as Plaintiff utilizes a wheelchair for mobility. Said barrier is covered by the A.D.A. guidelines and is in nonconformity with the requirements for such architecture.

15(c). Failure to provide ADA compliant parking stall size, in violation of 2010 ADAS Section 502.2 and/or 1991 ADA Standards for Accessible Design. The premises failed to have compliant parking stall and access aisle sizes as each parking space must be at least 11 feet wide

1 and marked which Plaintiff requires as Plaintiff utilizes a wheelchair due to the Plaintiff's
2 disability and such handicapped accessible parking stalls are necessary. Said barrier is covered by
3 the A.D.A. guidelines and is in nonconformity with the requirements for such architecture.

4
5 15(d). Failure to provide ADA compliant cross slope grading at the subject property in
6 violation of 2010 ADAS Section 502.4 and/or 1991 ADA Standards for Accessible Design. The
7 premises failed to have compliant wheelchair accessible cross slope grading as slopes exceed 2%
8 as Plaintiff utilizes a wheelchair for mobility. Said barrier is covered by the A.D.A. guidelines
9 and is in nonconformity with the requirements for such architecture.

10
11 15(e). Failure to provide ADA compliant access aisle on the driver's side of the parking
12 stall, in violation of 2010 ADAS Section 502.3.4 and/or 1991 ADA Standards for Accessible
13 Design. The premises failed to have compliant access aisle and/or striping which Plaintiff requires
14 as Plaintiff utilizes a wheelchair due to the Plaintiff's disability and such handicapped accessible
15 parking stalls are necessary. Said barrier is covered by the A.D.A. guidelines and is in
16 nonconformity with the requirements for such architecture.

17
18 15(f). Failure to provide ADA compliant parking stall signage, in violation 2010 ADAS
19 Section 502.6, and/or 1991 ADA Standards for Accessible Design and 2015 WSBC Section
20 1101.2.6. The premises failed to have compliant parking stall signage and sign height as Plaintiff
21 utilizes a wheelchair due to the Plaintiff's disability and such handicapped accessible parking stalls
22 are necessary. Said barrier is covered by the A.D.A. guidelines and is in nonconformity with the
23 requirements for such architecture.

24
25 15(g). Failure to provide ADA compliant ramp handrails, in violation of 2010 ADAS
26 Section 403.5.1 and/or 1991 ADA Standards for Accessible Design. The premises failed to have
27 compliant minimum clear width for sidewalks with surfaces a minimum of 36 inches wide as

1 Plaintiff utilizes a wheelchair due to the Plaintiff's disability and such handicapped accessible
2 parking stalls are necessary. Said barrier is covered by the A.D.A. guidelines and is in
3 nonconformity with the requirements for such architecture.

4
5 15(h). Failure to provide ADA compliant transaction counters height at the subject
6 property in violation of 2010 ADAS Section 904.4.1 and 904.4.2 and/or 1991 ADA Standards for
7 Accessible Design. The premises failed to have a compliant transaction counters with compliant
8 height restrictions for wheelchair access as Plaintiff utilizes a wheelchair for mobility. Said barrier
9 is covered by the A.D.A. guidelines and is in nonconformity with the requirements for such
10 architecture.

11
12 15(i). Failure to provide ADA compliant clear floor space extending beneath elements at
13 the subject facility, in violation of 2010 ADAS Section 308.2.2 and/or 1991 ADA Standards for
14 Accessible Design. The premises failed to have compliant clear floor space with extensions
15 beneath the element including cutouts for knee and toespace for wheelchair access as Plaintiff
16 utilizes a wheelchair due to the Plaintiff's disability and such handicapped accessible parking stalls
17 are necessary. Said barrier is covered by the A.D.A. guidelines and is in nonconformity with the
18 requirements for such architecture.

19
20 15(j). Failure to provide ADA compliant accessible self-serve dispenser reach ranges, in
21 violation of 2010 ADAS Section 308.1 and/or 1991 ADA Standards for Accessible Design. The
22 premises failed to have compliant accessible self-serve dispenser reach ranges for wheelchair
23 access as Plaintiff utilizes a wheelchair due to the Plaintiff's disability and such handicapped
24 accessible parking stalls are necessary. Said barrier is covered by the A.D.A. guidelines and is in
25 nonconformity with the requirements for such architecture.
26
27

1 15(k). Failure to provide access to and use of ADA compliant restroom facilities,
2 including, but not limited to, compliant restroom door, signage, hardware, the required restroom
3 maneuverability clear floor space, toilet and lavatory clear floor spaces, entry door clear floor
4 space, accessible dispenser heights, and mirror height, in violation of 2010 ADAS Section 213.2
5 and/or 1991 ADA Standards for Accessible Design. The premises contained multiple non-
6 compliant features for wheelchair access as Plaintiff utilizes a wheelchair for mobility. Said
7 barrier is covered by the A.D.A. guidelines and is in nonconformity with the requirements for
8 such architecture.
9

10 16. The above-referenced barriers will likely cause a repeated real injury in fact in a
11 similar way if not remedied when the Plaintiff frequents this property again as described
12 previously. Each of these barriers interfered with the Plaintiff's full and equal enjoyment of the
13 facility and deterred Plaintiff from encountering all applicable barriers at the premises by failing
14 to allow Plaintiff the same access due to the Plaintiff's disability as those enjoy without disabilities.
15

16 17. Upon information and belief, there are other current non-compliant barrier access
17 violations of the ADA at Defendants' premises, which may only be discovered and properly
18 identified once a full inspection of the premises is completed and identified due to Plaintiff being
19 deterred from discovering each and every barrier as a result of encountering the above-listed
20 violations.
21

22 18. As of the date of the filing of this suit, the readily achievable barriers and other
23 violations of the ADA still exist and have not been remedied or altered in such a way as to
24 effectuate compliance with the provisions of the ADA. The barriers to access at the premises, as
25 described above, have severely diminished Plaintiff's ability to avail Plaintiff of the goods and
26 services offered at the Subject Facilities, and compromise Plaintiff's safety.
27

1 19. Pursuant to the ADA, 42 U.S.C. §12101 *et. seq.*, and 28 C.F.R. §36.304, the
 2 Defendants were required to make the Subject Facility, a place of public accommodation,
 3 accessible to persons with disabilities since January 28, 1992. To date, the Defendants have failed
 4 to comply with this mandate.

5 20. The Plaintiff has been obligated to retain the undersigned counsel for the filing and
 6 prosecution of this action. The Plaintiff is entitled to have his reasonable attorney's fees, costs and
 7 expenses paid by the Defendants, pursuant to 42 U.S.C. §12205.

8 21. Pursuant to 42 U.S.C. §12188, this Court is vested with the authority to grant the
 9 Plaintiff's injunctive relief; including an order to alter the subject facilities to make them readily
 10 accessible to, and useable by, individuals with disabilities to the extent required by the ADA and
 11 closing the subject facility until the requisite modifications are completed.
 12

13 14 15 **COUNT II: WASHINGTON LAW AGAINST DISCRIMINATION**

16 22. Plaintiff incorporates by reference all allegations in the paragraphs above.

17 23. Plaintiff is a qualified individual with a disability within the meaning of the
 18 Washington Law Against Discrimination.

19 24. Section 49.60.030(1) of the Revised Code of Washington provides in pertinent part:
 20 "The right to be free from discrimination because of . . the presence of any sensory, mental, or
 21 physical disability . . is recognized as a declared to be a civil right. This right shall include, but not
 22 be limited to . . . (b) the right to the full enjoyment of any of the accommodations, advantages,
 23 facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement .
 24 . ."
 25

1 25. Defendants have violated and continue to violate §§ 49.60.010 *et seq.*, of the
2 Revised Code of Washington by violating multiple accessibility requirements under the ADA.

3 26. Defendants' actions constitute discrimination against persons with disabilities and
4 violate the Washington Law Against Discrimination, Revised Code of Washington §§ 49.60.010
5 *et seq.*, in that persons with mobility disabilities have been and are denied full and equal
6
7 enjoyment of the accommodations, advantages, facilities, privileges, and services that Defendant
8 provides to individuals who do not have disabilities.

9 27. As a direct and proximate result of Defendants' discriminatory conduct as alleged
10 in this Complaint for Declaratory and Injunctive Relief, the Plaintiff has suffered and continues
11 to suffer difficulty, hardship, isolation, and segregation and is denied the full and equal
12
13 enjoyment of services that the Washington Law Against Discrimination requires due to
14 Defendant's failure to remediate barriers.

15 28. Defendants' property does not comply with the ADA's accessibility laws and
16 regulations.

17 29. Because Defendants' property does not comply with the ADA's accessibility laws
18 and regulations, declaratory and injunctive relief are appropriate remedies under the Washington
19 Law Against Discrimination. *See e.g. Kucera v. Dep't of Transp.*, 140 Wash. 2d 200, 209 (2000).

20 30. Pursuant to RCW § 49.60.030(2), Plaintiff is entitled to declaratory and
21
22 injunctive relief and to recover from Defendants, reasonable attorneys' fees and costs incurred
23 in bringing this action.
24
25
26
27

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff hereby demands judgment against the Defendants and the Court declare that

- A. The subject premises and facilities violate Title III of the Americans with Disabilities Act and the Washington Law Against Discrimination;
- B. The Court enter an Order requiring the Defendant to alter their facilities and amenities to make them accessible to and usable by individuals with disabilities to the full extent required by Title III of the ADA;
- C. Any portions of the Defendant's premises identified as being non-compliant under the ADA guidelines be enjoined from being open to the public until such time that Defendants establish those areas are in full compliance with ADA requirements.
- D. The Court enter an Order directing the Defendant to evaluate and neutralize their policies, practices and procedures toward persons with disabilities, for such reasonable time so as to allow the Defendants to undertake and complete corrective procedures to the Subject Facility;
- E. The Court award reasonable attorney's fees, all costs (including, but not limited to court costs and expert fees) and other expenses of suit, to the Plaintiff; and
- F. The Court award such other and further relief as it deems necessary, just and proper.

1
2 DATED this ____ day of December, 2020.

3
4 Respectfully submitted,

5
6 /s/ M. William Judnich

7 M. William Judnich

8 WSBA #56087

9 Enabled Law Group

10 P.O. Box 4523

11 Missoula, Montana 59806

12 Telephone: 406-493-1084

13 Email: MJ@Enabledlawgroup.com
14
15
16
17
18
19
20
21
22
23
24
25
26
27